

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA, and)	
THE OSAGE MINERALS COUNCIL,)	
)
Plaintiffs,)	
)
vs.)	Case No. 14-CV-704-GKF-JFJ
)
OSAGE WIND, LLC;)	
ENEL KANSAS, LLC; and)	
ENEL GREEN POWER NORTH)	
AMERICA, INC.,)	
)
<u>Defendants.</u>)	

**DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT AND OPENING BRIEF IN SUPPORT**

EXHIBIT 5

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 and

6 OSAGE MINERALS COUNCIL,

7 Intervenor-Plaintiff,

8 vs No. 14-CV-704-GKF-JFJ

9 OSAGE WIND, LLC,
10 ENEL KANSAS, LLC;
and ENEL GREEN POWER
NORTH AMERICA, INC.,

11 Defendants.

12 VIDEOTAPED DEPOSITION OF BILL PRICE
13 Taken on Behalf of the Intervenor-Plaintiff
On July 21, 2021, beginning at 5:03 a.m.
All Parties Appearing Via Webconference

14 APPEARANCES

15 Appearing on behalf of the PLAINTIFF:

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20 and

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24 Appearances Continued on Next Page

VIDEOTAPED BY: Megan Smith

25 REPORTED BY: MARY K. BECKHAM, CSR, RPR

1 interconnection agreements, just the -- those type
2 of aspects that would have an impact on the
3 execution of the project, and so I would get -- I
4 gave my comments or inputs on whether we can
5 complete the project or execute the project in the
6 time needed to meet the obligations of the contract.

7 **Q What were the time obligations under the**
8 **contract that you all were required to meet with the**
9 **Osage Wind Farm project?**

10 A The project in general has one main
11 customer and one main -- which is an offtake
12 agreement, which was through a power purchase
13 agreement. I don't remember the name of the entity.
14 It was a utility, but Associated Electric or
15 something of this nature. So we had a power
16 purchase agreement, and it had certain requirements
17 for us to produce and be online for, and then
18 other -- other aspects, we had interconnection
19 agreements to interconnect the facility into the
20 transmission grid and testing requirements to
21 demonstrate the project met its requirements to
22 declare commercial, so all those requirements, so
23 that when we put the project online we had enough
24 time to meet the contractual --

25 **Q Uh-huh.**

1 A So that was my -- so that's the -- as I
2 said, the project has one main customer, which was
3 the -- this particular offtake.

4 Q **And with regards to the power purchase**
5 **agreement with Associated Electric, did you all end**
6 **up meeting the contractual dates?**

7 A Yes.

8 Q **Do you recall what that date was?**

9 A It was later 2015 -- or, excuse me, yeah,
10 '15, it was later 2015. The project, yeah, met its
11 requirements.

12 Q **Okay. Did you ever communicate with**
13 **anyone from General Electric regarding the Osage**
14 **Wind Farm project?**

15 A General Electric. Well, there's two --
16 two business entities with this project with General
17 Electric. One was the Turbine Supply Agreement,
18 called TSA, where they supplied the actual wind
19 turbines, the components of the wind turbines. Then
20 we -- GE was also the production tax credit -- I
21 believe the partner for the project, so they had an
22 investment aspect, so we had -- through GE there was
23 a former -- a technical advisor and GE's technical
24 team to -- we would -- they would be part of our
25 project review meetings, they would be part of

1 the same reaction, which is I don't know what the
2 documents are necessarily. We're only looking at
3 one provision in them, but I'd just note that for
4 the record for whatever it's worth. Sorry, Ms.
5 Nagle. Go ahead.

6 MS. NAGLE: Okay. Thank you.

7 Q **(By Ms. Nagle) So Mr. Price, do you know**
8 **whether or not this scope of work would have been in**
9 **effect at the time that you were vice president of**
10 **engineering and construction, in charge of the**
11 **project?**

12 A Eighty-four turbines, 84 turbine sites was
13 what we -- what we had planned to do. I believe we
14 had the 89 potential sites, but 84 excavations.

15 Q **Okay.**

16 A We had some alternate sites in the design
17 to -- in the event we encountered some difficult
18 sites or there's some cavern or some geotechnical
19 feature, maybe some oil and gas interference or
20 something, so we had a -- in the design work, we had
21 some surplus sites planned for. So in some
22 documents you might see 89, but the actual
23 foundations that were planned to be excavated was
24 84.

25 Q **Okay. And if you look up just a little**

1 A I wouldn't -- no. Sure, you wouldn't
2 want -- well, you have the wind turbine, so there's
3 a certain activity because the wind turbine is
4 spinning and it's 360 degrees, so it can go all the
5 way around.

6 Q **Okay.**

7 A So you have this diameter of the blade, so
8 there's a certain requirement there, yeah.

9 Q **And insofar as subsurface, you dig a hole**
10 **that's bigger than is necessary for the actual**
11 **turbine base; is that correct?**

12 A A little bit, yeah.

13 Q **And then -- I'm putting this in very**
14 **simple terms, because I'm certainly not a wind**
15 **turbine expert, but you place the wind turbine base**
16 **in the hole, and you put this compaction material**
17 **around it, backfill, right?**

18 A Sure. And to be more -- to be simple, I
19 mean, it's -- you do the excavation, which is
20 basically you're pulling the material, excavation is
21 that. You are pulling the material out of a hole,
22 you create a hole. The hole is a design, the size
23 of the hole, the physical location, the depth, the
24 diameter is all -- it's engineering defined, and
25 then you -- we place a mud mat, which is like a

1 formal foundation on the base. It's just a simple
2 concrete, non-finished pad, and then you -- we build
3 a rebar cage, which is the structural support of the
4 wind turbine. It has what they call a base and
5 pedestal. The pedestal is where the wind turbine
6 connects to. We pour the concrete, so you -- you
7 pour the concrete on the base. It cures for a
8 period of time. You pour the concrete all at once.
9 You have to, because if you don't, it's in various
10 different -- it has to be continued concrete --
11 where the concrete is poured all at the same time --
12 not all at the same time, but you can't let it cure
13 for a period of time between different concrete
14 batches. And then it cures for a period of time.

15 You do a test, and then you do the
16 backfill. So the backfill comes last, and the
17 backfill provides the surrounding structural part.
18 So if you think about it, a simpler thing is if you
19 look at a bridge post, so then it holds up a bridge.
20 So you've got the pillar that would also provide
21 structural support, the soil and the structural
22 support underneath the ground for that pillar. A
23 wind turbine is similar to that.

24 Q Okay. So -- and I understand that it's
25 much more technical than what you've just laid out